

App. Ser. No.: 09/526,100
Atty. Doc. No.: BCS03520-P01

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.: 09/526,100
Confirm. No.: 9168
Inventor: Steven Sheppard et al.
Filing Date: March 15, 2000
Title: Optical Conversion Device
Examiner: Ustaris, Joseph G.
Art Unit: 2623
Atty. Docket No.: BCS03520-P01

Mail Stop Appeal
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BREIF REQUEST FOR REVIEW

Please review the Final Rejection mailed on May 24, 2006. No amendments are being filed with this Request. This Request is being filed with a Notice of Appeal and required fee. The review requested is attached hereto and is not more than five (5) pages.

REQUEST FOR REVIEW

In the Final Rejection mailed on May 24, 2006, the Examiner rejected claims 39-45 under 35 U.S.C. 103(a) as being unpatentable to U.S. Patent No. 5,812,184 to Martinez. Applicant traverses this rejection.

As background, Applicant would like to point out that one use of the claimed invention is different from the use of Martinez's system. While Applicant's claims should not be limited to this one use, Applicant believes discussing these different uses will illustrate the structural differences between the claimed invention and Martinez's system.

One use of the present invention is in the home where signals from a remote control must be carried to a residential gateway (RG) in another room. Due to potentially lost signals, the optical signals from the remote control are converted into electrical signals and carried to the RG via coaxial cable in the home. *See*, page 21, lines 5-12 and Figure 6.

In contrast, Martinez's system is designed to accept user input via a remote control and forward that signal using the downstream path to a central receiver station. *See* column 4, lines 55-58, column 9, lines 8-20 and Figure 1. Thus, Martinez is attempting to use the shared coaxial cables among a plurality of subscribers to collect user inputs. This is in contrast to one use of the present invention where the coaxial cable in the home is used to forward a signal from a remote control in one room to a residential gateway in another.

In making the rejection, the Examiner takes Official Notice that it is well known to have a dedicated channel for each viewer. First, Applicant respectfully requests the

Examiner to provide a reference supporting this conclusion pursuant to MPEP 2144.03(C). Applicant believes this request is proper because others in this technical field describe users sharing channels to send data from a set-top box up to a CMTS. *See e.g.*, U.S. Patent No. 7,139,283; col. 9, lines 41-48. Thus, Applicant believes there is insufficient evidence to support the Examiner's conclusion.

Second, this assertion by the Examiner is also impractical. As stated earlier, Martinez transmits signals from a viewer in a downlink direction. *See*, col. 4, lines 28-31. This downlink direction is the same direction as the television channels being provided to the terminals from the head-end. Thus, in order to accomplish that which the Examiner asserts is well known in the art, a cable operator would have to provide enough downlink bandwidth to not only accommodate all of the television channels the subscribers might want, but it must also provide enough downlink bandwidth to accommodate all of the users transmitting data on their own separate channels. Thus, if 2,000 subscribers were sharing a node and the users wanted approximately 200 channels of entertainment, the cable provider would have to provide 2,200 channels to accommodate all of the users in Martinez's modified system. There is insufficient support in the prior art to support building such a system.

Finally, the Examiner modifies Martinez's Figure 6 by making the TDM slot selector always output a high signal. In other words, no subscriber would transmit data during an assigned slot. Instead, each subscriber would transmit data whenever he or she felt like it. This modification destroys Martinez.

Martinez's system requires that each user only transmit 1) when no one else is transmitting on that channel (*see* col. 8, lines 46-50) and 2) when there is no active video

data (*e.g.*, transmit during a vertical or horizontal blanking interval) (*see* col. 6, lines 50-53). The reason for the first condition is to avoid collisions. As shown in Figure 1, multiple subscribers share common cable 7. *See also*, column 6, lines 59-61. If two or more subscribers were to transmit data on the same channel at the same time, the result would be lost data and noise.

The reason for the second condition is so that a user does not transmit data over active video data and thereby inject noise over the video data. *See* column 6, lines 53-56. The Examiner's proposed modification to Martinez's system to effectively remove the TDM slot generator will introduce unwanted noise in direct contradiction to Martinez's express teachings. An obviousness rejection that relies on modifications that in turn destroy the reference is improper.

For at least these reasons, the Examiner's rejections are improper and should be set aside.

CONCLUSION

No additional fees are beyond the Petition for a 3 Month Extension and the Notice of Appeal due. However, the Office is authorized to charge any additional fees or underpayments of fees (including fees for petitions for extensions of time) under 37 C.F.R. 1.16 and 1.17 to account number 502117. Any overpayments should be credited to the same account.

Applicant respectfully requests reconsideration of the present application, withdrawal of the rejections made in the last Office Action and the issuance of a Notice of Allowance. The Applicant's representative can be reached at the below telephone number if the Examiner has any questions.

Respectfully submitted,

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Date